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OFFICE OF PETITIONS

In re Application of
Hellbaum, et al.
Application No. 08/797,553
Filed: 24 January, 1997
Attorney Docket No.: LAR-15348-2

ON PETITION

This is a decision request to withdraw the holding of abandonment, properly considered under 37 C.F.R. §1.181,¹ and alternatively a petition to revive (authorized at the fee for unintentional delay) and properly considered under 37 C.F.R. §1.137(b).²

The petition under 37 C.F.R. §1.181 is **DISMISSED as moot**; and

¹ The regulations at 37 C.F.R. §1.181 provide, in pertinent part:

§1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the *ex parte* prosecution of an application which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court; (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. * * *

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Brief or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declaration (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, it may be required that there have been a proper request for reconsideration (§1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his decision upon the matters averred in the petition, supplying a copy thereof to the petitioner.

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed. * * *

(f) Except as otherwise provided in these rules, any such petition not filed within 2 months from the action complained of, may be dismissed as untimely. The mere filing of a petition will not stay the period for reply to an Examiner's action which may be running against an application, nor act as a stay of other proceedings. * * *

² Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

The petition under 37 C.F.R. §1.137(b) is **DISMISSED as moot**.

The record indicates that:

- it appeared that Petitioner had failed to reply properly and timely to the non-final Office action mailed on 19 June, 2001, with response due (absent extension of time) on or before 19 September, 2001;
- therefore, it appeared that the application went abandoned after midnight 19 September, 2001;
- as a result, a Notice of Abandonment was mailed on 27 March, 2002;
- however the record now indicates that on 18 January, 2002, Petitioner filed a reply (over a 19 December, 2001, certificate of mailing) to the 19 June, 2001, Office action with a request (and fee) for a three- (3-) month extension of time;
- moreover, on 9 July, 2002, the Technology Center (2800) withdrew *sua sponte* the holding of abandonment.

Therefore the petition under:

- 37 C.F.R. §1.181 must be and hereby is **dismissed as moot**; and
- 37 C.F.R. §1.137(b) must be and hereby is **dismissed as moot**.

The petition fee of \$100.00 previously charged to Deposit Account 14-0116 is credited back to that account. No other fees were charged.

This application is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.



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